

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

CRIMINAL NO. 98760

C O M M O N W E A L T H

V.

M I C H A E L S U B E N K O

AFFIDAVIT OF BEVERLY SUBENKO
IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL

I, Beverly Subenko, hereby depose and state the following facts in support of defendant's motion for a new trial:

1. I am the mother of the defendant, Michael Subenko and freely provide the following information.
2. On October 10, 1996 my son Michael Subenko ("Defendant") was involved in a serious motor vehicle accident which caused severe damage to the defendant's head and neck.
3. Subsequent to this accident the defendant was having difficulty with his communication skills and the ability to focus his thoughts and attention.
4. On the many occasions that I have had to communicate with the defendant prior to and subsequent to this serious accident leaves me to believe that the defendant to this very day, shows the effect that accident has had on him.
5. Prior to the defendant's January 4th, 1999 trial date I specifically informed his trial counsel, Mr. Frank Mondono of the defendant's inability to think properly and to articulate what little he could.
6. On at least one occasion, either several weeks prior to the defendant's trial date or on the defendant's trial

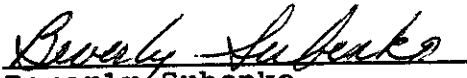
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date the defendant's sister Laurie Subenko was present and made privy to the conversation with the defendant's trial counsel regarding the defendant's inability to think properly.

7. The defendant's trial counsel Mr. Mondono stated that it was not important to the case that the defendant could not think properly only that he could. Meaning Mr. Mondono.
8. Mr. Mondono also stated that he was hired to do all the thinking and that the defendant had little to add to the case.

I, Beverly Subenko, under the pains and penalties of perjury hereby state that the foregoing facts to be true and accurate to the best of my knowledge, understanding and belief.

Signed under pain and penalty of perjury on this 17 day of November, 2004.


Beverly Subenko